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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/512,085	11/08/2004	Erik Hestvik	04196	2788
23338	7590	02/22/2006	EXAMINER	
DENNISON, SCHULTZ, DOUGHERTY & MACDONALD			MAI, TRI M	
1727 KING STREET			ART UNIT	
SUITE 105			PAPER NUMBER	
ALEXANDRIA, VA 22314			3727	

DATE MAILED: 02/22/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/512,085

Applicant(s)

HESTVIK, ERIK

Examiner

Tri M. Mai

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 13-25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 13-25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 13-25 are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 11/8/04

- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

### **DETAILED ACTION**

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the diameter of the second holding member compared to the diameter of the end of the baton (cl. 1), the strap, the short extending bar (claim 15), the holding member having the strap and the bracket manufactured as one homogenous piece (cl. 17), the holder being attached to a rigid support structure to be attached to a user's leg (cl. 22), the holder manufactured from an integral part of a coat (cl. 24), the second holding member being attached at the opposite side of the buckle (cl. 21) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

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2. Claims 15, 17, and 22-24 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The specification fails to show the locking device in claim 15 and its operation. See drawing objection.

The specification fails to show holding member and the bracket being made from homogenous piece. It seems that it is impossible to make the first holder from homogenous piece due to the flexibility of portion 7 compared to the rigidity of portion 1.

Regarding claim 22-24, the specification fails to show holding member is attached to the various devices as claimed. See drawing objections above.

3. Claims 13-25 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

“or the like” renders the claim indefinite.

Regarding claim 13, “flexidble” is misspelled.

Regarding claim 19, “in 10 combination” is confusing.

4. Claims 13, 14, 16, 19-21, 23, and 25 rejected under 35 U.S.C. 102(b) as being anticipated by Parsons et al. (4955518). Parsons teaches a holder having a first holding member 15, designed to encircle the baton so that its grip end 2 is free comprising a flexible and including a locking device (26) suited to close and open respectively for a gap (Fig. 6). Parsons

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teaches a second holding member 22 designed to encircle the baton farther away from the grip end than the first holding member comprising an opening.

5. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Parsons '518 in view of Audley (710236). It would have been obvious to one of ordinary skill in the art to provide a locking device with an opening closed to the free end and a short extending bar M as taught by Audley to provide an alternative fastening means.

6. Claims 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Parsons '518 in view of either Nivet (3954238) or Wickersham (4871102). Either Nivet or Snoise teaches that it is known in the art to provide a holder with the strap and bracket made from one homogenous piece. It would have been obvious to one of ordinary skill in the art to make the strap and bracket from a homogenous material as taught by either Nivet or Wickersham to manufacture the holding device easily. Furthermore, it would have been obvious to one of ordinary skill in the art to make the strap and bracket from a homogenous material because construction of a product in unity or diversity would have been an obvious choice of manufacturing or convenience. See, *In re Zabel et al.* 38 C.C.P.A., 832, 186 F.2d 735, 88 USPQ 367.

7. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Parsons '518. It would have been obvious to one of ordinary skill in the art to make the first holding member from natural or synthetic material to provide the desired material for the holding device.

8. Claims 23, and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Parsons '518 in view of Robinson (454770). It would have been obvious to one of ordinary skill in the art to manufacture the holder as part of a garment as taught by Robinson to keep the coat and the holding device together.

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9. Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Parsons '518 in view of Rassias (6149042). Rassias teaches that it is known in the art to provide a holder 11 attached to a rigid support structure 1 to be attached to a user's leg. It would have been obvious to one of ordinary skill in the art to provide the holder of Parsons attached to a rigid support structure to be attached to a user's leg as taught by Rassias to provide the desired place for holding the device.

***Election/Restrictions***

10. This application contains claims directed to the following patentably distinct species (please select one from each set):

Set 1:

Group I: the holder attached to a belt,

Group II: the holder is attached to a leg,

Group III: the holder is attached to a garment.

Set 2:

Group a: The bracket with an extending bar, and

Group b: The bracket with a snap fastener.

Set 3:

Group 1: the holder where the strap and the bracket are made from one homogenous piece,

Group 2: the holder where the strap and the bracket are made from different material

The species are independent or distinct because each of the species is specific to the attachment of the holder the fastening devices and the material of the holding device.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claim 1 is generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which depend from or otherwise require all the limitations of an allowable generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tri M. Mai whose telephone number is (571)272-4541. The examiner can normally be reached on 7:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on (571)272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Tri M. Mai  
Primary Examiner  
Art Unit 3727

